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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,885	07/07/2003	Garry Tsaur		8893
29745	7590	03/16/2005		
JOE NIEH 18760 E. AMAR ROAD #204 WALNUT, CA 91789			EXAMINER FIDEI, DAVID	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/614,885	Applicant(s) TSAUR, GARRY	
	Examiner David T. Fidei	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification, page 1, states the swab applicator's to which the present invention are directed toward include a tubular handle made of wood, paper, plastic and it may be solid or hollow to contain liquid or cream. Page 2 states the present invention is an economical packaging means for elongated members such as swab applicators irrespective of whether it contains a liquid. Also, nothing is mentioned in the specification, as original filed, stating the hollow tube housing does not contain any liquid.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 5-9, and 11-13 rejected under 35 U.S.C. 102(b) as being anticipated by Beottger (Patent no.2,835,246). A packaging is disclosed as recited in claims 1 and 7, including an elongated hollow tube housing 2 with a fixed length that resists axial compression (note the rigid plastic construction shown in the figures and disclosed, col. 3, line 19), an elongated protective member 4a (including a swab in the embodiment of 4b) within the elongated hollow tube housing 2; and a protective covering 9 enclosing the elongated hollow tube housing 2 and the elongate member 4a, see the embodiments of figures 1-3. The package protects the elongated member from being axially compressed and contaminated by virtue of the longer extent of the elongated hollow tube housing over the member 4a and the use of plastics noted above.

As to claims 2 and 8, the elongated hollow tube housing is slightly longer than the elongated member as shown in figures 1, 3 and 4.

As to claims 3, 9 and 13 the elongated hollow tube housing has a first end (at the bottom near swab 4b) and a second end wherein the first end is sealed by virtue of a bottom wall constructed therein.

As to claims 5, 6, 11 and 12 the protective covering 9 is made of plastic, see col. 5, lines 5-12.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 10; 1-3, 5-9, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beottger (Patent no.2,835,246) in view of Lowry et al (Patent Pub no. US 2002/0088723) and Nichols (Patent no. 2,542,206). The difference between the claimed subject matter and Beottger resides in the protective covering having a

notch formed at one or more of its edges to allow easy opening of the protective covering. Lowry et al deals with the problem of handling biological specimens as does Beottger et el. A shipping package 36 is taught by Lowry et al that is used transporting specimens as is well known by those skilled in the art. To use a shipping rather than an outer container 9 employed by Beottger et al to receive the specimen and paperwork (see paragraph [0041] of Lowry et al, would have been obvious to one skilled in the art, in order to provide a more economical means of transporting the specimen.

While the bag of Lowery et al is adhesively sealed, last line of paragraph [0041], it is not disclosed how one opens the bags. However to provide a notch formed at one or more of its edges to allow easy opening of the protective covering as taught by Nichols would have been obvious to one of ordinary skill in the art, in order to provide a convenient, easily accessible means for accessing the contents without requiring additional implements such as scissors.

As explained previous, Beottger (Patent no.2,835,246) discloses the subject matter of claims 1-3, 5-9, and 11-13. Hence these claims have also been rejected for aforementioned reason.

Response to Arguments

7. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection. An elongated hollow tube housing with a fixed length that resists axial compression is believed to be clearly shown by Beottger (Patent no.2,835,246). With regard to the hollow tube housing not contain any liquid it is submitted nothing in the present specification, as originally submitted, provided support for this newly claimed subject matter. The disclosure must describe the claimed invention with all its limitations. See Tronzon v. Biomet Inc., (Fed. Cir. 1998); Lockwood v American Airlines Inc., (Fed. Cir. 1997). Accordingly, it is believed the rejections as applied above are tenable.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3728

A handwritten signature in black ink, appearing to read 'David T. Fidei', is positioned above the printed name.

David T. Fidei
Primary Examiner
Art Unit 3728

dtf
September 23, 2004